SUPREME COURT, U.S.

Office - Supreme Court, U.S.
FILED
SEP 24 1957
JOHN T. PEY, Clerk

Supreme Court of the United States

OCTOBER TERM, 1957

No. 80

JOHN H. HARMON, III,

Appellant,

—against—

WILBUR M. BRUCKER, individually, and as Secretary of the Department of the Army,

Appellee.

BRIEF FOR *AMICUS CURIAE*

CARL RACHLIN,
Counsel for The Workers Defense League,
112 East 19th Street,
New York, New York.

ALBERT H. BLUMENTHAL,
JOHN C. SOMERS,
Of Counsel,
Members of the New York Bar.

INDEX

	PAGE
Interest of *Amicus Curiae*	1
Statement	2
Facts of the Case	3
Argument:	
I. An individual who receives a less-than-honorable discharge from the military service suffers a substantial and continuing material injury	4
Introduction	4
(A) Loss of Public Benefits	6
(B) Loss of Private Benefits	10
II. The Department of the Army has no authority to conduct an inquiry into constitutionally protected, innocent, non-criminal, civilian activities; nor to employ improper procedures; nor to determine the character of discharge on the basis of such activities.	16
Conclusion	20

Table of Authorities Cited

Cases:

Bernstein v. *Herren* (U. S. D. C., S. D. N. Y.), 136 F. Supp. 493 ..... 5, 16, 17

Burns v. *Wilson*, 346 U. S. 137 and 844 (1953). 19

Cummings v. *Missouri*, 4 Wall. 277 19

Joint Anti-Fascist Refugee Comm. v. *McGrath*, 341 U. S. 123 (1951) 18

PAGE

Takahashi v. *Fish and Game Commission*, 334 U. S. 410 19

United States v. *Ballard*, 322 U. S. 78 18

United States v. *Lovett*, 328 U. S. 303 19

United States ex rel. Toth v. *Quarles*, (No. 3 Oct. Term 1955, 24 Law Week 4005 17

Wiemann v. *Updegraff*, 344 U. S. 183, 73 S. Ct. 215 10

Statutes:

Act of May 5, 1950, 64 Stat. 145, 10 U. S. C. A. 652a 16, 18

Army Reg., 41 Stat. 809 (1920) 18

McKinney's Consolidated Laws, New York:

Civil Service Law, Sec. 21-2 9

Education Law, Sec. 608 9

General Business Law, Sec. 32 9

Military Law, Sec. 122 8

Social Welfare Law, Sec. 168-176 9

Purdon's Statutes Annotated, Title 51, Military Affairs, Sec. 455.2, Pennsylvania 8

Revised Code, Washington:

Section 28.77.070 8

Section 73.04.010 8

Section 73.04.050 8

Section 73.04.060 8

Section 73.16.010 8

Section 73.16.030 8

Section 73.32.030 8

Section 173.24.010 8

PAGE

Statutes Annotated, Michigan, Section 41.1093(22)(d) 8

Title 59 of the Revised Code Annotated, Ohio:
Section 5901.25 7
Section 5903.03 7
Section 5903.06 7
Section 5905.02 7
Section 5907.04 7
Section 5909.09 7

5 U. S. C. A. 851 6

24 U. S. C. A. 49 6

36 U. S. C. A. 45 6

38 U. S. C. A. Chapter 12A 6

Universal Military Training Service Act of 1948, 62 Stat. 604, 50 U. S. C. A. 451 et seq... 16

West's Annotated California Code:
Section 801 8
Section 891 8
Section 921 8
Section 929 8
Section 981.1 8

Miscellaneous:

PAGE

Hearings before Senate Committee on Armed Services on Doctor Draft Act Amendments, 83rd Cong., 2nd Sess. 75 (1954) 17, 18

U. S. Army Reg. No. 615-360, par. 7 (1953) ... 5

U. S. Army Reg. No. 615-375, par. 2(b) (1951) 18

VA Regs. No. 1 (A) 6

VA Regs. No. 7 (A) 6

VA Regs. No. 9 (A) 6

Treatises:

Kimbrough, Robert T., "The American Law of Veterans" (1954), Sec. 149 (P. 105) 5, 6

Report on Veterans Benefits of the United States by President's Commission on Veterans Pensions, State Veterans Laws, Government Printing Office (1956) 7

Watts, Rowland, "The Draftee and Internal Security, A Study of the Army Military Personnel Security Program," (New York, 1955), pp. 7-8 10

Supreme Court of the United States

OCTOBER TERM, 1957

No. 80

JOHN H. HARMON, III,

Appellant,

—against—

WILBUR M. BRUCKER, individually, and as Secretary of the Department of the Army,

Appellee.

BRIEF FOR *AMICUS CURIAE*

Interest of *Amicus Curiae*

The Workers Defense League is an unincorporated membership association organized in 1937 under the laws of the State of New York, with its principal office in New York City and members throughout the country. Its sole concern is in upholding the Constitution of the United States and in protecting the civil liberties of its people. It is not bound to any political party or creed and unpopular causes are defended by it solely because an adverse decision may at some future date adversely affect the civil and political rights, and the very lives, of all our people.

One of the principal areas of interest of the Workers Defense League has been the Military Personnel Security Program. More than 100 individual cases

have been represented by attorneys associated with it and the knowledge and experience gained thereby, and particularly through the efforts of Rowland Watts, its former Executive Director, has given to the Workers Defense League a unique insight into the problems arising out of this program.

This brief will focus directly on the experience, the expertise that the Workers Defense League has gained in this field and it is in this light that the Workers Defense League requests the permission of this Honorable Court to bring to its attention information, based upon its experience, concerning the consequences to young American men and women who have received less-than-honorable discharges under the Military Security System. We are not engaged in a philosophical debate. Receipt of a less-than-honorable discharge affects not only property rights, but the very existence of the individual.

The attorneys for the Appellant and the Solicitor General of the Department of Justice for the Appellee, have consented to the submission of this brief as *Amicus Curiae* by the Workers Defense League.

Statement

While other issues may be raised by either of the parties involved herein, it is only with the issue of civil liberties, particularly the denial of rights protected by the Bill of Rights that this brief concerns itself.

We direct ourselves to the question of whether Harmon suffered an injury by receiving a less-than-honorable discharge from the United States Army and

whether his constitutional rights were invaded in affecting that injury.

Facts of the Case

There is little dispute as to the facts in the present case. In February, 1954, while Harmon was actually on duty with the United States Army, he was required by the Adjutant General to reply in writing to a "Letter of Allegations" containing what was termed "derogatory information". Briefly, the information set forth was that (1) In 1951 and 1952, he was employed at Camp Lakeland; (2) In 1949, he was employed by the Detroit Urban League; (3) In 1952, he indicated in his political registration in New York City his vote for the American Labor Party; and (4) He solicited contributions for the defense of persons indicted under the Smith Act. The letter also contained information about the alleged "subversive" associations of Harmon's father and mother.

All the allegations pertained to Harmon's activities and associations as a civilian which by their very nature ceased prior to military service with the exception of (a) His continued relationship with his parents and (b) A letter which he wrote to two friends soliciting funds for Smith Act indictees.

Appellant replied to the allegation denying that he was then, or had ever been, a member of the Communist Party. In April 1955, the Adjutant General notified Appellant that he would be retained in the service and that upon the completion of his term of service, he would receive a discharge appropriate to the character of service.

Exactly two months later, without notice or hearing, the Adjutant General rescinded the prior order and separated the appellant from the United States Army with an "Undesirable" discharge certificate.

ARGUMENT

I. An individual who receives a less-than-honorable discharge from the military service suffers a substantial and continuing material injury.

Introduction

A young man about to embark upon his course in life, has few references to call upon to establish his character and reputation. Standing high on the list and widely recognized in our society today, is the character of his military service. The character of his service is measured by his discharge certificate. The character of a military discharge affects not only an individual's reputation in the eyes of a prospective employer, but qualifies the individual for many Federal and State benefits.

Harmon like his contemporaries, will suffer the loss of substantial public and private benefits due to a discharge certificate which is less-than-honorable. In some instances, the particular benefit will appear substantial on its face. In others, the benefit will seem less important. However, as to those benefits, it should be noted that the needs and interests of the claimant at the time of application will cast an entirely different light on their value.

Judge Edelstein speaking for the Court in *Bernstein v. Herren*, (U. S., D. C., S. D., N. Y.) 136 F. Supp. 493, stated:

> "An honorable discharge encompasses a property right as well as civil rights and personal honor."

The United States Army has indicated an appreciation of the far-reaching consequences of a discharge certificate:

> "Because the type of discharge may significantly influence the individual's civilian rights and eligibility for benefits provided by law, it is essential that all pertinent factors be considered so that the type of discharge will reflect accurately the nature of service rendered." *U. S. Army Reg.* No. 615-360, par. 7 (1953).

The value of a favorable discharge certificate for meritorious service is well recognized by American legal authorities. Robert T. Kimbrough in, "The American Law of Veterans" (1954), Sec. 149 (P. 105) states:

> "The kind of discharge received by a member of the armed forces is a matter of great importance. Not only will an unfavorable discharge stigmatize the recipient in his business life and social relations, but most of the benefits provided by law for veterans and their dependents are conditioned upon the receipt of a favorable discharge by the person on whose service the claim is based." At page 105.

While the enforcement of a constitutional right is not dependent on the total deprivation of that right,

we believe it will be of help to this Court to set forth the specific nature of the deprivation invoked by a less-than-honorable discharge under the circumstances described herein.

(A) Loss of Public Benefits

Under various Federal statutes, benefits are available to individuals who have received honorable discharges and in some few cases, to individuals who have received discharges which are not less-than-honorable.

A discharge under honorable conditions is required for a preference in government employment. (5 U. S. C. A. 851).

The facilities of the Soldier's Home are limited to applicants who have served "honorably". (24 U. S. C. A. 49). Membership in veterans' organizations such as The American Legion, The American Veterans and others, is conditioned by law on the showing of an honorable discharge. (36 U. S. C. A. 45).

Benefits available through the Veterans Administration are based upon the character of discharge from the service. (38 U. S. C. A. Chapter 12A). An honorable discharge is required under VA Regs. No. 1(A) for pensions, disability benefits, death benefits, vocational rehabilitation; under VA Regs. No. 7(A) for medical care; and under VA Regs. No. 9(A) payment for burial expenses.

The benefits set forth above under Federal law will be denied to Harmon. The less-than-honorable discharge which he received set him apart from other

former servicemen, resulting in a substantial loss of property otherwise available in the form of federal benefits.

In addition to the benefits available under Federal law, the various states have extensive benefits for honorable military service. A Report on Veterans Benefits of the United States by the President's Commission on Veterans Pensions, State Veterans Laws, Government Printing Office (1956), contains an exhaustive digest of state laws and related statistical data regarding rights, benefits and privileges of veterans. We will briefly set forth references to a cross section of state laws granting such benefits to servicemen who have received honorable discharges. Our research goes beyond the above report and identifies the specific benefits conditioned on the character of the discharge from military service.

OHIO, Title 59 of the Revised Code Annotated, Sec. 5901.25 confers burial rights when honorably discharged; Sec. 5903.03 directs the restoration to public employment when discharged under honorable conditions; Sec. 5903.06 requires the restoration to private employment when discharged under honorable conditions; Sec. 5905.02 conditions committment to a mental institution for servicemen on an honorable discharge as is required by the Veterans Administration; Sec. 5907.04 limits admissions to the Ohio Soldier's and Sailor's Home to honorably discharged veterans; and Sec. 5909.09 limits admission to the Soldier's and Sailor's Orphan's Home to the children of honorably discharged servicemen.

PENNSYLVANIA, Purdon's Statutes Annotated, Title 51, Military Affairs, Sec. 455.2 defines a veteran as one who has been discharged under honorable conditions.

WASHINGTON, Revised Code, Sec. 73.04.010, no fee for oath or certificate when the applicant has an honorable discharge; Sec. 73.04.050, no fee for peddler's license for an honorably discharged applicant; Sec. 73.04.060 exempts certain business from tax when conducted by honorably discharged veteran; Sec. 73.16.010 grants a preference in state employment to an honorably discharged veteran; Sec. 73.16.030 restores a veteran to private employment based on his honorable discharge; Sec. 173.24.010 extends burial payments to an honorably discharged veteran; Sec. 73.32.030 conditions the granting of the veterans bonus to an applicant of honorable service status; and Sec. 28.77.070 exempts an honorably discharged veteran from tuition fees at Washington University.

CALIFORNIA, West's Annotated California Code defines a veteran as one who has received an honorable discharge. Veterans are eligible for burial payments, Sec. 929; educational benefits, Sec. 981.1; relief assistance, Sec. 921; assistance in farm and home purchase, Sec. 801; and aid to dependents, Sec. 891.

MICHIGAN, Statutes Annotated, Sec. 4.1093(22) defines a veteran as one who served honorably, (d) "honorable and faithful service" shall be such service as is evidenced by an honorable discharge.

NEW YORK, McKinney's Consolidated Laws, Military Law, Sec. 122 defines a veteran as any enlistee or inductee in the military service of the United States

who receives a discharge other than "a dishonorable discharge, a discharge without honor, or a discharge for the good of the service." On this basis, a serviceman with less-than-honorable discharge would be denied a disability annuity. Social Welfare Law, Sec. 168-176 requires an honorable discharge for admission to Soldier's home, hospital, medical care, drugs, nursing care, financial assistance and burial payments. Preferences allowed veterans in appointment, promotions and restoration to employment under the Civil Service Law, Sec. 21-2 are limited to veterans who were honorably discharged or released under honorable circumstances. Tuition and fees available annually to veterans under the Education Law, Sec. 608 are denied to veterans who received a discharge certificate other than honorable. The General Business Law extends many benefits to honorably discharged veterans, such as exemption from the fee for a peddler's license in Sec. 32.

The brief description of the benefits available under State and Federal law as set forth above, clearly establishes the property rights denied to a veteran with a less-than-honorable discharge. Harmon individually and representing a class of veterans who have received less than honorable discharges are excluded from the benefits available to them under Federal law and the laws of their respective States.

We respectfully submit that this deprivation of property rights is a substantial one and requires a critical examination of the military administrative procedures which permit same and the authority of the military to condition a discharge on the exercise of constitutionally protected rights.

(B) Loss of Private Benefits

The immediate and continuing injury that a veteran suffers as a result of a less-than-honorable discharge founded upon disloyalty or security grounds is far reaching, affecting every facet of the veteran's life. Mr. Justice Clark speaking for this Court in *Wiemann* v. *Updegraff*, 344 U. S. 183, 73 S. Ct. 215, at 191, stated:

> "There can be no dispute about the consequences visited upon a person excluded from employment on disloyalty grounds. In the view of the community, the stain is a deep one; indeed it has become a badge of infamy. Especially is this so in time of cold war and hot emotions when each man begins to eye his neighbor as a possible enemy."

The experience of the Workers Defense League developed over the past seven years in assisting young American men faced with the dilemma of a military security proceeding is best summed up by Rowland Watts: "The Draftee and Internal Security, A Study of the Army Military Personnel Security Program" (New York, 1955), pp. 7-8.

> "It brands a man for his non-criminal perfectly legitimate activities at the age of fifteen. In one case, it had threatened to brand him for his alleged associations at the age of eight. It threatens to brand a man for the accident of having been born into a politically unacceptable family. It threatens to brand him, if he marries a girl whose family is politically unacceptable. This 'branding' is not a theoretical thing. A man with an 'Undesirable' discharge from

the Army has little hope of getting an industrial job or any job with a productive future."

These are the comments of the man who conducted the most extensive inquiry into the military personnel security program.

Many young men throughout the United States have submitted sworn statements to the Workers Defense League testifying to the consequences of a less-than-honorable discharge. The consequences cover the full gamut of human misery, not simply financial loss and hardship, but isolation from family, friends and neighbors, a desperate search for vocation when the usual avenues are foreclosed and most important, the loss of respect and dignity in the community of men.

We will very briefly recite extracts from the statements submitted to the Workers Defense League. The identity of the individuals will be limited to the disclosure of their military serial numbers. This limited disclosure is necessary to avoid any further hardship.

US 51 324 358

"Besides the difficult emotional strain of adjustment to civilian life, hampered by the undesirable discharge, the family tension—there was a real problem of economic strain. Loss of mustering out pay, difficulty of finding a job in a non-defense, non-screened industry. Electronic technician. The good paying jobs in the defense industry were closed to me.

"Decided to return to school and matriculate for a degree in Electrical Engineering. Was denied the

G. I. Educational Benefits by N. Y. State Veterans Administration.

"Made an application for a disability claim against U. S. Army prior to discharge. . . . . This claim was denied by US Army because of the nature of my discharge."

US 56 216 946

"Unemployment, some family and financial difficulties.

"My work xperience (and chosen field) was in journalism. I was unable to find any newspaper job until this year. (From Nov. 54 until March 57, I was a truck-driver.)

"It would be an exaggeration to say that my UD was solely responsible for my present separation from wife and children. But the strain of unemployment, unsuccessful appeals, etc. certainly played a part."

WA 8 108 495

"Had difficulty finding a job where knowledge of type of discharge existed.

"Was accepted at two jobs, then discharged. Was refused bond for a job requiring my handling precious metals, thus, occasioning the loss of the job.

"Was refused admittance to CCNY.

"Spent almost two years in a state of indecision—when resolved unsatisfactorily, may account for my nervousness and inability to sleep.

"Family life completely disrupted, relations with father and mother. In the case of my friends, sur-

prise and shock—and in many cases, withdrawal of their friendship."

US 52 055 415

"Unable to follow vocation desired; VA has not approved my vocational rehabilitation. Ohio Korean Bonus now being held up."

US 52 198 508

"Those who knew about my discharge reacted in a mixed way. Some it didn't affect. Others it made more apprehensive as to certain continued associations on the grounds of possible affect to themselves.

US 51 198 578

"Could not get a job because my discharge did not meet with employers' standards. Mentally I became depressed, and physically run down."

ER 55 147 139

"In November 1951, I was drafted into the Army. During my 23 months in the Army, I served 16½ months in Korea, some of which time was spent in the front lines. I was honorably released on September 28, 1953 and placed in the inactive reserves. On February 29, 1956, two years after being out of the service, I had a hearing before a "Field Board of Inquiry" because of alleged associations with organizations listed as subversive by the U. S. Attorney General. These charges were made by nameless informers after my active service terminated and covered a period after my honorable release [Received undesirable discharge April 1957].

US 51 324 252

"The main reason I have delayed my application to the Character Committee of the New York Bar for license to practice law has been the undesirable discharge.

US 56 238 440

"Lost job at Bank of America."

"Have neurology problem manifest one year after discharge (the link to Army is a definite possibility according to my neurologist)".

AF 52 292 253

"Duodenal ulcer precipitated within 6 weeks of date of separation. Healed by medical management 6-8 weeks after that but insurance affected (one sickness and accident policy denied, others "rated")."

US 56 222 801

"The main one was the refusal of the Department of Education at U. C. L. A. to allow to practice teach in order to get my Secondary Teaching Credential. Plus many, too many to enumerate."

US 56 199 421

"This type of discharge puts you under great mental anguish about losing your job and not being able to find another one."

OI 549 260

"None from the discharge itself. However, the affair as a whole cost me about $400, hundreds of hours of work, and very considerable nervous strain."

US 56 233 816

"Despite M. A. degree from U. of California and enough credits for P. H. D., I decided to get job and not return to school. Who would hire a college teacher with Undesirable Discharge? I may return to University now that I have Honorable."

US 55 435 123

"I was refused a Teacher's certificate by the Chicago Board of Education."

The above quotations, taken directly from the statements furnished the W. D. L., are set forth here to establish the unfortunate scope of the injury to young men and women like John Harmon. The scarlet letter of disloyalty marks them for life in every avenue of activity. It denies to them the normal intercourse among the community of men. It forecloses the usual development pursued by young people in employment, and education. They are barred for life from all the customary institutions of society.

We respectfully submit that this lasting injury dramatically shows that we are not dealing with an abstraction. With this background, the unconstitutional acts of the military stand out in sharp relief, contrary to our laws, our Constitution, to the very essence of ethical conduct.

II. The Department of the Army has no authority to conduct an inquiry into constitutionally protected, innocent, non-criminal, civilian activities; nor to employ improper procedures; nor to determine the character of discharge on the basis of such activities.

An examination of the *Universal Military Training and Service Act of 1948*, 62 Stat. 604, 50 U. S. C. A. 451 et seq. and the Act of May 5, 1950, 64 Stat. 145, 10 U. S. C. A. 652a fails to reveal any authority in the Department of the Army to characterize a discharge on the basis of constitutionally protected activities.

The Act authorizes the removal of persons inducted into the Army and the establishment of procedures to affect that purpose. We concede that the Department of the Army may remove alleged "security risks"—but we object to the character of discharge being predicated upon constitutionally protected activities. Neither Congress, nor any agency of the government has the authority to injure a man or deprive him of his property because he has exercised his constitutional rights. The Supreme Court during the history of our Constitution has emphatically upheld this contention as an axiom of our law.

Judge Edelstein stated in *Bernstein v. Herren* (D. C., S. D., N.Y.) 136 F. Supp. 493:

> "An honorable discharge encompasses a property right, as well as civil rights and personal honor. If an honorable discharge were denied to a soldier

with an unexceptionable service record, on the basis merely of pre-induction conduct, it would be in my opinion a deprivation of property without due process of law, and a regulation establishing a procedure for affecting such a denial could not be authorized by Statute.

In *United States ex rel. Toth* v. *Quarles,* (No. 3 Oct. Term 1955, 24 Law Week 4005) it was held that after the discharge of a soldier he cannot even be held by the Army to a trial for a crime alleged to have been committed while he was in service. It is certainly not contended that the Army could try a soldier for a crime alleged to have been committed prior to his entry upon service. Yet to put a soldier in jeopardy of a less-than-honorable discharge for acts committed prior to induction and for acts which were not criminal—is scarcely less offensive to our notions of rudimentary fairness."

We recognize the authority of the military establishment after a fair and impartial hearing to discharge a soldier on the basis of good and sufficient cause. However, the individual is then entitled, as a matter of right, to a discharge, based upon the character of service he has rendered.

Former Secretary of the Army, Mr. Stevens, conceded this point by stating:

"The traditional policy of the Army has been that the discharge given should reflect the service rendered. In other words, a man whose conduct has been faithful and honest during his time in the service, would be entitled to separation under

honorable conditions, notwithstanding what his conduct may have been prior to entering the service." (Hearings before the Senate Committee on Armed Services on Doctor Draft Act Amendments, 83rd Cong., 2nd Sess. 75 (1954).)

The Army has promulgated regulations pursuant to Congressional authority which were inconsistent with the security program. Army Reg., 41 Stat. 809 (1920), as amended 10 U. S. C. Sec. 652a (1952) states that the purpose of a discharge certificate is "to specify the character of service during the period covered by the discharge." U. S. Army Reg. No. 615-375, paragraph 2(b) (1951).

Those acts which an inductee committed prior to induction are not within the jurisdiction of the Army. We are deeply concerned that in these difficult times, the military establishment seeks to control by threat of unfavorable discharge, the civilian life of an American. The Army can remove a man from the service, but it can not discharge him, defame him and penalize him for innocent, constitutionally protected civilian activities. To [illegible]e him a discharge other than honorable when the character of his service is unquestionably "honorable", is an act of defamation specifically prohibited by the First Amendment. *Joint Anti-Fascist Refugee Comm.* v. *McGrath*, 341 U. S. 123 (1951), Frankfuter, J. concurring at p. 149, *United States* v. *Ballard*, 322 U. S. 78.

Should Congress enact legislation authorizing the Army to characterize a discharge on the basis of civilian activities, such legislation would be declared

invalid as a "Bill of Attainder." *United States* v. *Lovett*, 328 U. S. 303, 317, 318. It is likewise invalid as punishment without a judicial trial in violation of the Sixth Amendment. Punishment was defined by the United States Supreme Court in *Cummings* v. *Missouri*, 4 Wall. 277, at pp. 321-322 as follows:

> "The theory upon which our political institutions rest, is that all men have certain inalienable rights —that among them are life, liberty and the pursuit of happiness; and that in the pursuit of happiness all avocations, all honors, all positions, are alike open to everyone, and that in the protection of all these rights all men are equal before the law. Any deprivation or suspension of any of these rights for past conduct is punishment and can be in no otherwise defined." Also see, *Takahashi* v. *Fish and Game Commission*, 334 U. S. 410.

The Army likewise denied all the basic elements of procedural due process. What due process means with military proceedings as in all situations flows from the concept of elemental fairness. *Burns* v. *Wilson*, 346 U. S. 137 and 844 (1953). Harmon was denied the right to be informed of the charges against him, to be confronted by his accusers, to cross-examine witnesses for the government, to a fair and open hearing, to challenge for cause members of the administrative determining bodies and especially, to be represented by counsel.

Passing the question of authority, it is impossible to find that the military satisfied the minimum standards of procedural due process.

Conclusion

The United States Army has asserted jurisdiction over the civilian phase of the lives of thousands of young men and women. Neither law nor custom vests this authority in the military establishment. Lacking the authority, however, the Army has violated the Constitutional guarantees of due process. In consequence of this usurpation of authority, the Army has punished, in a substantial and continuing form, hundreds of young men and women. We respectfully submit to this Court that the Army has acted without authority and in violation of the Constitution of the United States. We respectfully request that this Court declare the Army regulations pursuant to which the Military Personnel Security System is founded, ultra vires, illegal and void, and order the issuance of an honorable discharge pursuant to the customary authority and procedures, to John H. Harmon, III.

Respectfully submitted,

CARL RACHLIN,
Counsel for Workers Defense League.

ALBERT H. BLUMENTHAL,
JOHN C. SOMERS,
Of Counsel,
Members of the New York Bar.